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Comptroller General
of the United States

Washington, D.C. 20548

REDACTED VERSION*

Decision

Matter of: Litton Systems, Inc., Guidance & Control Systems Division

File: B-256709

Date: July 21, 1994

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Richard P. Burkard, Esq., and John Van Schaik, Esq., Office of the General Counsel, GAO, participated in the preparation of the decision.

DIGEST

Where solicitation provided for an evaluation of proposals under various award scenarios and contemplated the possibility of multiple awards based on a best value determination, protest is sustained since agency source selection decision was based on misleading and inaccurate cost estimates which significantly affected the agency's understanding of the price differences among competing award scenarios.

DECISION

Litton Systems, Inc., Guidance & Control Systems Division, protests the award of a contract to Honeywell Inc. under request for proposals (RFP) No. F33657-93-R-0002, issued by the Department of the Air Force for embedded global positioning system (GPS)/intertial navigation system (INS) units for Army, Navy, and Air Force aircraft. These navigation systems, which use the global positioning satellite network to provide precise navigation, attitude, and time data to aircraft, are referred to as "EGI" (Embedded GPS/INS) units. Litton argues principally that

*The decision issued on July 21, 1994, contained proprietary information and was subject to a General Accounting Office protective order. This version of the decision has been redacted. Deletions are indicated by "[deleted]."

the Air Force has failed to adequately justify its decision to award all contract requirements to Honeywell.

We sustain the protest.

BACKGROUND

Scope of the Contract

The RFP was issued on October 19, 1993, and contemplated the award of a contract or contracts for EGI units and data on a fixed-price basis, and modification, installation, and support services on a level-of-effort and cost-reimbursement basis. Although the preamble stated that the RFP is for a 5-year production contract for 3,600 EGI units and related items, the basic contract requirement was for only 29 EGI units modified or "missionized"[1] to meet specific interface requirements for the following six aircraft or "platforms:"

(1) Army Apache Longbow, AH-64 C/D
(2) Army Apache A+, AH-64A+
(3) Army Special Operation Forces (SOF) aircraft
(4) Army Kiowa, OH-58D
(5) Navy Cobra, AH-1W
(6) Air Force F-15, MSIP

The RFP required between four and six EGI units for each of the six platforms and included options to allow the agency to acquire up to 100 additional "integration units" which could be used to missionize future platforms. The RFP also contained an option allowing the government to acquire up to 3,600 "core" EGI units or "production units." These production units do not include missionization or installation.

The RFP included a provision for missionization of 24 additional platforms under the contract beyond the 6 basic platforms. It provided that future missionization for additional platforms would be added through the "Contract Change Proposal" procedures pursuant to the changes clause of the basic contract.

As will be discussed in detail below, the RFP permitted multiple awards for the basic contract requirements. The missionization of future platform provision stated that if multiple awards were made for the basic requirements, the future missionization requirements will be "competed between the successful awardees of the EGI basic contract." If multiple awards were made, the contractors would be requested to submit firm, fixed-price proposals and the Air

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[1]Missionization was defined as "the modification of NDI [Non-Developmental Item] hardware and/or software to meet unique platform requirements."

Force would make new selections for each new platform. In the event of a single award, the competition provisions were not applicable.

Evaluation Scheme

The RFP provided that the agency reserved the right to make one, more than one, or no award, depending on the quality of the proposals submitted and the availability of funds. Award was to be made to the offeror(s) "whose proposal(s) is/are judged, by an integrated assessment of the Evaluation Criteria and General Considerations listed . . . to be the most advantageous to the government." The RFP stated further that the government would evaluate proposals against the following criteria, listed in descending order of importance: (1) Technical, (2) Logistics, (3) Manufacturing/Management, and (4) Most Probable Life Cycle Cost (MPLCC). Cost, however, was stated to be "a substantial factor in the source selection decision."

With respect to cost, the RFP provided that the evaluation would be based on an estimate of each offeror's MPLCC. The MPLCC was defined as the "sum of estimated costs for Production (including missionization/integration), Operations and Support, and Other Government Costs." The MPLCC for each offeror was to include prices for 29 integration units for the 6 platforms required under the base portion of the contract. In addition, each offeror's MPLCC was to include the government's expected costs in acquiring quantities of integration units for future uncertain platforms which the RFP described as "generic fighter," "generic cargo," and "generic helicopter." An MPLCC estimate for each offeror was to be determined for the following award alternates based on most probable quantity estimates set forth in the RFP:

Alternate 1

> 100% award for all most probable platforms (AH-64C/D, Apache A+, OH-58D, Army Special Operations Aircraft (SOF), AH-1W, F-15, Generic Fighter, Generic Cargo, and Generic Helicopter). The quantity to be evaluated under this scenario was 52 integration units and 2,632 production units.

Alternate 2 (multiple award)

> Scenario A: 100% award for all Army platforms. The quantity to be evaluated for this scenario was 40 integration units and 1,740 production units.

Scenario B: 100% award for the Navy and Air Force platforms. The quantity to be evaluated for this scenario was 35 integration units and 892 production units.

Alternate 3 (multiple award)

Scenario A: 100% for the Army AH-64C/D, Apache A+, and the Air Force F-15 platforms. The quantity to be evaluated for this scenario was 39 integration units and 1,428 production units.

Scenario B: 100% award for the Army OH-58D, Army SOF, Navy AH-1W. The quantity to be evaluated for this scenario was 36 integration units and 1,204 production units.

Thus, for MPLCC purposes, the most probable quantity of integration units under award alternate 1 (single award) was 52 units, while under alternates 2 and 3[2] (multiple awards) the most probable quantity was 75 units.[3] For production units, the most probable quantity was 2,632 for all three alternates. The RFP provided that "[e]ach of the five award scenarios and three award alternates will be evaluated independently. The award scenario chosen will depend upon the SSA [source selection authority] judgment as to what provides the best value to the government." The RFP also incorporated a clause which stated that offers will be evaluated on the basis of advantages and disadvantages to the government that might result from making more than one award.

The Evaluation

The Air Force received three proposals in response to the RFP. Only the Litton and Honeywell proposals were included in the competitive range. Following discussions, the evaluators assigned color and risk ratings to each of the proposals under the evaluation criteria. The Honeywell and [deleted].[3] The ratings were supported by evaluators' narratives setting forth the various strengths, weaknesses, and risks for each of the proposals.

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[2]Since alternates 2 and 3 were to involve multiple awards, the total number of units to be provided under each of those alternates is the sum of the units to be provided under both scenarios within the alternate. For example, under alternate 2, the 75 units consisted of 40 integration units to be provided by the scenario A contractor and 35 units to be provided by the scenario B contractor.

[3][Deleted.]

The agency also evaluated and rated the proposals and the offerors for performance risk, a pre-award survey, and software capability/capacity review. [Deleted.]

A source selection advisory council (SSAC) composed of representatives from the Air Force, Navy, and Army reviewed the evaluators' findings. The SSAC noted that its primary concern was the meeting of platform schedules and that selecting one awardee as opposed to two "could result in risk to that objective." It noted further that selecting two vendors "is more politically acceptable and would retain the industrial base with two viable contractors for navigation systems far into the future." It pointed out the anticipated addition of the Navy F-18 platform to the contract and expressed concern that the F-18 "may not be able to receive [the integration units] if only one contractor is awarded." While the SSAC also stated that "[i]f two contractors are selected, commonality will not be achieved to the ultimate extent," it observed that "two [c]ontractor awards for current and future platforms may be the best strategy since [the users] will have both contractors competing on successive awards."

With respect to the proposals, the SSAC focused on the evaluators' concerns about Litton's [deleted] and about the impact of Honeywell's [deleted].

With respect to cost, the MPLCC for a single award to Litton was the lowest at approximately $264,000,000, while a single award to Honeywell was approximately $287,200,000. Although the original charts used to brief the SSA showed that alternate 2A--Litton/2B--Honeywell was estimated by the Air Force to cost [deleted], in response to the protest, the Air Force acknowledged that those briefing charts were in error and that the cost of that alternate should have been only [deleted]. The SSA states that he was aware of the error when he made the selection decision.

The Source Selection

The SSA, after reviewing the findings of the evaluators and the SSAC, as well as data presented at source selection briefings, concluded that a single award to Honeywell offered the best overall value to the government. The one page source selection decision stated that "[a]lthough the most probable life cycle cost of Honeywell's Alternate #1 [single award] is not the lowest, it is my view that the [cost difference] is more than offset by the superior technical characteristics, outstanding system engineering approach, management expertise, and production capability of Honeywell." The document did not address whether any additional cost involved in making multiple awards would be

offset by any possible advantages. The contract was awarded to Honeywell on March 4, 1994. This protest followed.[4]

Superseding Source Selection Decision

In response to Litton's protest, the SSA prepared and included in the Air Force administrative report for this protest a revised source selection decision. That document, dated April 13, 1994, and signed by the SSA, stated "[t]his [s]ource [s]election [d]ecision is a revision and supersedes in its entirety the [original] [s]ource [s]election [d]ecision." In that document, the SSA also stated that "I may have considered an unstated evaluation criteria in reaching the source selection decision." Specifically, the SSA acknowledged that the RFP provided that in the evaluation $500 would be considered the cost of administering multiple contracts. The SSA also stated that "[i]n reaching my initial decision, I considered the fact that multiple awards would result in an approximate 21% increase in Government personnel" and that "I have now reconsidered my decision disregarding this fact."

In the superseding decision, the SSA also stated that his decision includes an "assessment of the advantages/disadvantages of single versus multiple awards," and explained further that "[i]n making my determination for a single award I took into consideration the following:

> "1. SSET [source selection evaluation team] findings, including Expanded Pre-award Survey (EPAS), revealed a single vendor could successfully meet all requirements,
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> "2. An approximate 3% to 13.5% cost savings (MPLCC) would be realized with an Alternate #1 single award versus any combination of Alternates #2A and #2B or Alternates #3A and #3B multiple award scenarios,
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> "3. Common Core and Same Core Prices for all users."

Concerning the award to Honeywell, the SSA stated:

> "My integrated assessment revealed that Honeywell, Inc. has an outstanding overall program, excellent technical approach, good logistics concept, outstanding production capability to meet our

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[4]Pursuant to the Competition in Contracting Act of 1984, 31 U.S.C. § 3553(d)(2) (1988), the agency has proceeded with contract performance based upon a written determination that urgent and compelling circumstances will not permit waiting for our decision.

schedule requirements, and excellent past performance record. . . ."

The document reaffirmed the initial selection of Honeywell under alternate 1, "winner take all."

PROTEST ALLEGATIONS

Litton alleges that the SSA's award determinations failed to explain the basis for the conclusion that the single award represented the greatest value to the government and that there is no evidence that the SSA considered the relative advantages and disadvantages of the multiple award scenarios described in the RFP. Litton argues that the first and third considerations in the SSA's superseding selection decision are merely general observations about a single award which are inherent in a single award to either vendor.

With respect to the second consideration--the cost savings of a single award to Honeywell compared to any of the multiple award alternates--Litton argues that the agency made significant errors in its calculation of the MPLCC estimates. First, Litton notes that the agency has conceded that the original briefing charts shown to the SSA included a $6.9 million error and that the cost of the multiple award alternate 2A--Litton/2B--Honeywell was only [deleted], not [deleted], compared to the $287,200,000 estimated cost of a single award to Honeywell. Although the SSA has stated that he was aware of the error in the briefing charts when he made the selection decision, Litton points out that the approximate cost savings of a single award set out in his superseding decision is based on the erroneous [deleted] figure for the 2A--Litton/2B--Honeywell alternate.

In addition, Litton argues that, even with the corrected [deleted] estimated cost for alternate 2, the comparison of the alternate 1 Honeywell single award to the multiple award alternates included another error. According to Litton, the [deleted] estimated cost for alternate 2 was based on acquiring a greater quantity of integration units (75) than the number of units (52) to be acquired under a single award at an estimated cost of $287,200,000. The protester contends that in determining which alternate presented the better value, the Air Force did not adjust either price to reflect the different quantities. According to Litton, because the integration units are extremely expensive, the failure to make this adjustment had a substantial impact on total MPLCCs. Litton concludes that a proper calculation based on a common quantity shows that the cost of a multiple award under alternate 2A--Litton/2B--Honeywell is virtually equal to or lower than the price of a single award to Honeywell. Moreover, it states that the combined Litton and Honeywell color and risk ratings for that multiple award alternate are equal to or better than those assigned for the single award to Honeywell alternate.

AIR FORCE POSITION

The Air Force contends that Litton's argument concerning unequal quantities is untimely raised since the RFP set forth the quantities to be used in establishing the MPLCC. It argues that since the disparity was apparent on the face of the RFP, the protester was required to protest the disparity not later than the time set for receipt of proposals in accordance with our Bid Protest Regulations, 4 C.F.R. § 21.2(a)(1) (1994).

Concerning the merits of this argument, the Air Force does not dispute that the MPLCC estimates used in the evaluation of the single awards under alternate 1 were based on only 52 integration units, while the MPLCC estimates used in the evaluation of all of the multiple award alternates were based on 75 integration units. Rather, the agency generally asserts that the most probable quantity information in the RFP was "structured to account for any possible situation or combination that would arise and to compare all offerors equally" and that the evaluation was performed in accordance with the RFP terms.

DISCUSSION

We are unpersuaded by the Air Force's argument that Litton's allegation is untimely. While we agree that the disparity of integration units between the single award alternate 1 and the multiple award alternates was apparent in the RFP, that is not the basis for protest. The protest is that the selection decision did not take into account these quantity differences, only bottom line cost considerations, and therefore did not reflect the best value to the government required by the RFP. Thus, the fact that the RFP provided for disparate numbers of integration units for the MPLCC evaluation does not make this protest untimely.[5]

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[5]Honeywell contends that Litton's arguments concerning the calculation of the MPLCC were first introduced in its comments on the agency report and therefore constituted new protest allegations which do not independently satisfy our timeliness requirements. We disagree. The gravamen of the protest was that the SSA "utterly failed to explain the basis for his conclusion that a single source award . . . represented the greatest value to the government." In its protest, Litton alleged that the Air Force's best value decision, including its use of MPLCC estimates, was "flawed, arbitrary, and irrational" and, in particular, that the Air Force did not "rationally" examine "the relative merits of a single versus multiple award." We view Litton's comments concerning the MPLCC estimates as further development of the firm's original protest assertion that the Air Force's comparison of the various award alternates was irrational.

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Turning to the merits, we agree with the protester that the MPLCC estimates used by the SSA included either inflated prices for the multiple award alternates or misleadingly low prices for the single award estimates under alternate 1. In the evaluation, the MPLCC estimates for both alternate 1 single awards (Litton or Honeywell) included 52 integration units, while the MPLCC estimates for each alternate 2 and each alternate 3 combination were based on 75 units. There is no indication that the agency made any adjustment in its evaluation or source selection to account for this difference. Specifically, there is no evidence in the record that, when he made the original selection decision, the SSA was aware that the MPLCC estimates he was comparing were based on different quantities. Also, nothing in the superseding selection decision or other statements of the SSA indicates any appreciation, or awareness, that the apparent cost advantage of a Honeywell single award, compared to any multiple award alternate, was a function of the lower number of integration units on which the Honeywell MPLCC estimate was based. The cost advantage therefore was illusory.[6]

In addition, the Air Force has presented no evidence refuting Litton's position that correcting the error results in virtually equal prices for the alternate 1 award to Honeywell and alternate 2A--Litton/2B--Honeywell. While source selection officials are entitled to independently judge the merits of competing proposals, these judgments must have a rational basis. TRW, Inc., B-254045.2, Jan. 10, 1994, 94-1 CPD ¶ 18. Given the discrepancy in the quantities on which the MPLCC comparisons were based, we cannot conclude that the agency has reasonably determined which award alternate represented the greatest value to the government.

We recognize that adjusting the prices to correct for the difference in quantities would not necessarily result in a different selection decision. However, under the multiple award alternates, the Air Force could structure the contracts to take advantage of the strengths of each vendor while minimizing its weaknesses and, on this record, for example, it appears quite possible that, given equal prices, award alternate 2A--Litton/2B--Honeywell could be viewed as

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[5](...continued)
The comments were offered to substantiate the alleged procurement deficiency and did not constitute new and independent protest grounds. See The Aydin Corp.; Dep't of the Army--Recon., B-224908.3; B-224908.4, May 19, 1987, 87-1 CPD ¶ 527.

[6]In this respect, we note that the integration units have a meaningful value--they are to be missionized and used in operating aircraft or at least maintained as inventory.

offering a better value to the government than the single award to Honeywell under alternate 1. As stated, this alternate received color and risk ratings equal to or better than the ratings for a single award to Honeywell. Under the circumstances, and given the misleading price comparison used in the selection decision, we think that the selection might be different. Beckman Instruments, Inc., B-246195.3, Apr. 14, 1992, 92-1 CPD ¶ 365. We therefore sustain the protest on this ground.[8]

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[7]Honeywell argues that Litton was not prejudiced by any errors in the selection decision. While Honeywell suggests that, assuming prices to be equal, a single award to Honeywell represents the better value to the Air Force than any other award alternate, this determination rests solely with the contracting agency. Contrary to Honeywell's position, on this record, the Air Force could reasonably conclude that award alternate 2A--Litton/2B Honeywell offers a better value to the government than a single award to Honeywell. We therefore think the flawed selection decision prejudiced Litton. See The Jonathan Corp.; Metro Mach. Corp., B-251698.3; B-251698.4, May 17, 1993, 93-2 CPD ¶ 174 (a reasonable possibility of prejudice is a sufficient basis for sustaining a protest). Honeywell also asserts that the MPLCC calculation errors "applied equally to all offerors." Honeywell's assertion is without merit since it fails to recognize the complexity of the evaluation scheme. For example, while the error applied equally to both offerors in comparing single awards, or when comparing alternate 2 to alternate 3, as discussed, any comparison of a single award to a multiple award alternate was skewed in favor of the single award by the lower quantity of integration units in the calculation of an MPLCC estimate for the single award alternate. Under the circumstances, we conclude that Litton was prejudiced by the misleading MPLCC figures in the comparison of a Honeywell single award to any of the multiple award alternates.

[8]Litton also alleged that the selection was tainted by erroneous information which was presented to the SSA. Specifically, Litton states that the SSA was advised that there was a federal criminal investigation against the Litton Guidance & Control Systems Division. Litton explains that the investigation does not involve the Guidance & Control Systems Division, which submitted the EGI proposal, and that it is merely an investigation of a qui tam suit, filed by a private party. Litton similarly argued that the Air Force misunderstood the significance of a patent infringement suit by Litton against Honeywell which resulted in a $1.2 billion verdict in favor of Litton. The protester states that the lawsuit was unreasonably considered by the evaluators to be a "risk and concern" relating to Litton. In light of our decision and our recommendation that the

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RECOMMENDATION

In responding to the protest allegations, the SSA stated in a May 26 declaration that the "broad business base expected at the start of the program never materialized" and that "[s]everal of the users were no longer considering the system." He stated that the "[f]lexibility to add platforms . . . and additional production capability were nullified by the lack of business base." According to the SSA's declaration, this change in anticipated needs played a significant role in his selection of Honeywell. This explanation was offered for the first time in a declaration prepared months after the original selection decision and the superseding selection decision, is essentially undocumented, and appears to be inconsistent with the remainder of the record showing the Department of Defense's commitment to EGI as a means of meeting a Congressional directive for GPS capability in all Department of Defense (DOD) aircraft by September 2000. In this respect, the National Defense Authorization Act for Fiscal Year 1994, Pub. L. No. 103-160, § 152(b), 107 Stat. 1578 (1993), provides that "[a]fter September 30, 2000, funds may not be obligated to modify or procure any Department of Defense aircraft . . . that is not equipped with a [GPS] receiver."

Nevertheless, since the Air Force apparently now has more accurate information about DOD needs for EGI units than was reflected in the RFP, we recommend that the Air Force revise the RFP to reflect its actual needs and provide an evaluation scheme which reflects those needs and will result in a reliable indicator of estimated costs under the competing award alternates.[9] The agency should request and evaluate new best and final offers from Honeywell and Litton, and make a new source selection decision in accordance with the RFP.[10]

In the event that award or partial award to Litton is determined to be most advantageous to the government, the

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[8](...continued)
agency reconsider the selection decision, we need not decide these issues.

[9]The Air Force also should clarify whether plastic parts are acceptable in the EGI units. In a separate protest ground, which we need not decide, Litton stated that if it had been aware that the Air Force interpreted the RFP to allow the use of plastic parts in the EGI units, it could have reduced its costs by as much as [deleted].

[10]The agency states that alternate 3 was not considered due to a funding shortfall. The agency should determine whether circumstances have changed such that funding would be available for awards under alternate 3.

Air Force should terminate or partially terminate the contract with Honeywell. The Air Force should also refrain from exercising options or modifying the Honeywell contract until it has made a new selection decision. We also find Litton entitled to the costs of filing and pursuing its bid protest, including reasonable attorneys' fees. 4 C.F.R. § 21.6(d)(1). In accordance with 4 C.F.R. § 21.6(f)(1), Litton's certified claim for such costs, detailing the time expended and the costs incurred, must be submitted to the Air Force within 60 days after receipt of this decision.

The protest is sustained.

Comptroller General
of the United States